

(1982) 07 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 134 of 1980

Smt. Jeejeebai Shinde

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-07-1982

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 45, 49(2), 80T

Madhya Pradesh Town Improvement Trust Act, 1961 — Section 71, 71(1), 71(2)

Citation : (1983) 33 CTR 241 : (1983) ILR (MP) 719 : (1983) 144 ITR 693 : (1982) 117 ITR 783

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : M.S. Choudhary, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani J.

1. By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred to this court the following question of law for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the capital gains were chargeable to tax in the assessment year 1974-75 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the capital gains are chargeable to tax in the year of transfer of capital asset, even though the initial compensation is determined and becomes payable in subsequent years ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the capital gains are chargeable to tax in the year of transfer, even though no gains could be computed u/s 48 during that year ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was

right in extending the analogy relating to the enhanced compensation under specific provision of law, to the year of transfer, to a case of initial compensation without there being any specific provision in that behalf?"

2. The material facts giving rise to this reference, as set out in the statement of case, are as follows :

The assessee is an individual and the assessment year in question is 1974-75. Parcels of agricultural land owned by the assessee were acquired by the Improvement Trust by notification dated November 9, 1973, issued u/s 71 of the M. P. Town Improvement Trust Act, 1961. On January 14, 1976, the Trust informed the assessee that the Trust was willing to pay her a sum of Rs. 1,61,840 as compensation. The assessee, however, did not agree to the amount of compensation and hence the matter was referred by the Trust to the Tribunal constituted under the M. P. Town Improvement Trust Act. During the course of assessment proceedings for the assessment year 1974-75, relevant to the accounting year ending on March 31, 1974, the ITO proposed to tax the capital gains arising out of the acquisition of the aforesaid parcels of agricultural land. The assessee objected, inter alia, on the ground that during the assessment year in question, the amount of compensation had not been determined and hence no capital gains could be computed in accordance with the provisions of Section 45 of the Act. It was also urged on behalf of the assessee that since the agricultural land became a capital asset only on March 1, 1970, its value as on March 1, 1970, should be taken as envisaged by Section 49(2) of the Act. The ITO rejected both these contentions and determined the amount of capital gains on the compensation amount of Rs. 1,61,840 by deducting therefrom the value of the land as on January 1, 1954, and further deductions admissible u/s 80T of the Act. Thus, the income chargeable under the head "Capital gains" was determined at Rs. 77,072. The assessee preferred an appeal. The AAC held that since the amount of compensation was determined during the financial year 1975-76, the capital gains could be deemed to have accrued to the assessee only during that year and not during the assessment year 1974-75 when the land in question was acquired by the Improvement Trust. Aggrieved by the order passed by the AAC, the Department preferred an appeal before the Tribunal. The Tribunal took the view that capital gains were chargeable to tax during the year in which the transfer took place, and not during the year when the amount of compensation was determined or paid to the assessee. In this view of the matter, the Tribunal allowed the appeal and remanded the case to the AAC to decide the other question raised by the assessee. Aggrieved by the order passed by the Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid questions of law have been referred to this court for its opinion.

3. Shri Chaudhary, learned counsel for the assessee, contended that Section 45 of the Act, by virtue of which capital gains were chargeable to Income Tax, had to be read along with Sections 48, 54B and 54E as all these provisions were parts of an integrated code and as computation of capital gains, as provided by

Section 48 of the Act, was not possible till the receipt or accrual of the full value of consideration on account of the transfer, which according to the learned counsel accrued to the assessee only on January 14, 1976, when the Improvement Trust made the offer, capital gains in the instant case could not be held subject to tax during the year of transfer. It was urged that the reliefs granted to the assessee by the provisions of Section 54B and 54E would be rendered illusory if capital gains were subjected to tax in the year of transfer even though the consideration was received or accrued to the assessee after the expiry of the periods specified in Section 54B and 54E of the Act, which entitled the assessee to the grant of reliefs under their provisions. It was, therefore, contended that capital gains should be held to be chargeable to Income Tax during the year of the "effective transfer" when the consideration for transfer accrued to or was received by the assessee.

4. To appreciate the contentions urged on behalf of the assessee, it would be necessary to refer to the relevant provisions of law. Section 45 of the Act makes profits or gains arising from the transfer of a capital asset, effected in the previous year, chargeable to Income Tax. Section 45 of the Act further provides that those profits or gains shall be deemed to be the income of the previous year, in which the transfer took place. Section 2(47) of the Act defines "transfer" in relation to a capital asset as one including compulsory acquisition of that asset. Section 71(2) of the M.P. Town Improvement Trust Act, 1961, provides that on publication of the notification in the Gazette as envisaged by Sub-section (I) of Section 71, the land shall, on and from the date of such publication, vest absolutely in the trust free from all encumbrances.

5. The provisions of Section 71(2) of the M.P. Town Improvement Trust Act make it clear that the title to the land compulsorily acquired vested in the Trust from the date of publication of the notification u/s 71(1) of the Act. As Section 2(47) of the (I.T.) Act, includes compulsory acquisition of land in the expression "transfer", such transfer must be held to have taken place on the date of publication of the notification u/s 71(1) of the (M.P.) Act. By the fiction introduced by Section 45 of the (I.T.) Act, it is provided that the profits or gains arising from the transfer of a capital asset shall be deemed to be the income of the previous year, in which the transfer took place. Accordingly, capital gains have to be assessed in the assessment year corresponding to the previous year, in which the transfer took place, in the instant case the transfer took place on November 9, 1973, when the notification u/s 71(1) of the M.P. Town Improvement Trust Act, 1961, was published. Therefore, that is the date when the transfer was effected. The date when the consideration for transfer was received or accrued is not relevant for the purpose of determining the year of chargeability on account of the fiction introduced by Section 45 of the Act. Whatever may be the date of receipt or accrual of consideration as a result of the transfer of a capital asset, the accrual or receipt of consideration would have to be attributed, by statutory mandate, to the year of transfer. Hence, an enquiry into the question as to when the right to receive the compensation amount

accrues to a person, in the case of compulsory acquisition of his property under the provisions of the M.P. Town Improvement Trust Act, 1961, though interesting, would not be relevant for the purpose of determining the year of chargeability of the capital gains because the relevant year is, by virtue of the deeming provisions of Section 45 of the (I.T.) Act, 1961, the year when the transfer took place.

6. Reliance was placed on behalf of the assessee on the decision of the. Supreme Court in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, . The question for consideration in that case was whether goodwill generated in a newly commenced business, can be held to be an asset, within the terms of Section 45 of the Act. The Supreme Court held that all transactions encompassed by Section 45 of the Act must fall under the governance of its computation provisions and a transfer, to which these provisions could not be applied, must be regarded as never intended by Section 45 of the Act to be the subject .of the charge.

7. Now, the computation of capital gains, as provided by Section 46 of the Act, in the case of compulsory acquisition of land, does not present any difficulty. The cost of acquisition and the full value of consideration received or accrued can be ascertained. This is not a case to which the computation provisions cannot apply at all. It was, however, contended that the provisions of Section 54B and 54E of the Act, governing the reliefs to be granted to the assessee, would never be attracted, if the amount of compensation in case of compulsory acquisition of land accrued to the assessee after the expiry of the period prescribed by these provisions. It is, however; not necessary for us to decide the question as to whether the assessee is or is not entitled to the reliefs provided by Section 54B and Section 54E of the Act, as that question would be examined by the authorities concerned as and when it arises. Moreover, the question as to whether reliefs should be provided to assesseees to relieve the hardship, by making suitable legislative provisions, is a matter for the Legislature to consider. But the absence of provisions, which would have entitled an assessee to claim relief, cannot have the effect of rendering the provision regarding computation for quantifying the income chargeable under the head "Capital gains" unworkable. In the instant case, these provisions cannot be held to be non-applicable as in the case of goodwill of a new business. The decision in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, is, therefore, distinguishable on facts and cannot be pressed into service in support of the contention advanced on behalf of the assessee.

8. In our opinion, therefore, the Tribunal was right in holding that the capital gains were chargeable to tax in the year of transfer of the capital asset, i.e., the assessment year 1974-75. Our answers to the first three questions referred to this court by the Tribunal are in the affirmative and against the assessee. As regards question No. 4, that question does not really arise out of the order of the Tribunal as the question, as to whether the assessee is or is not entitled to the

reliefs available under the Act, on the analogy of reliefs in the case of enhancement of compensation, has not been decided by the Tribunal. We, therefore, decline to answer that question. In the circumstances of the case, parties shall bear their own costs of this reference.